

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 36.12.101, 36.12.102,)
36.12.103, and 36.12.1701 regarding)
water right permitting)

To: All Concerned Persons

1. On July 14, 2011, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-154 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1277 of the 2011 Montana Administrative Register, Issue No. 13.

2. The department has amended ARM 36.12.102 and 36.12.103 as proposed.

3. The department has amended ARM 36.12.101 and 36.12.1701 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) through (32) remain as proposed.

~~(33) "Manifold" means two or more diversions from the same source, which are connected into a single system for the same project or development. An example of a manifold system is two pumps on one source, or two wells pumping from the same aquifer which divert water into the same reservoir or cistern.~~

(34) through (79) remain as proposed but are renumbered (33) through (78).

36.12.1701 FILING A PERMIT APPLICATION

(1) through (2)(a) remain as proposed.

(b) multiple purposes supplied by different points of diversion on the same source. If the entire project is manifold into one system, then a single application is allowed. "Manifold" means two or more diversions from the same source, which are connected into a single system for the same project or development. An example of a manifold system is two pumps on one source or two wells pumping from the same aquifer which divert water into the same reservoir or cistern.

(3) through (5) remain as proposed.

4. A summary of the written comments and oral testimony from the August 10, 2011, appears below with the department's response.

COMMENT 1: Commenters expressed concern with the proposed relocation of the definition of "manifold" from ARM 36.12.1701 to 36.12.101. Moving the definition of "manifold" to the general definition section for the subchapter would appear to

broaden the scope of actions that would qualify as "combined appropriations". Commenters also expressed concern that the proposed revision is in conflict with 2011 Mont. Laws 256, Sec. 3(1) (HB 602), which precludes DNRC from "adopt[ing] rules to implement the provisions of 85-2-306(3) for groundwater wells that are exempt from permitting until October 1, 2012."

RESPONSE 1: As DNRC stated in the proposal notice reasonable necessity, the definition for "manifold" was proposed to be moved from ARM 36.12.1701 to ARM 36.12.101 as it is a definition that applies throughout the subchapter. There was no intent by DNRC to apply the definition any differently than it is currently applied. However, due to the commenters' concerns, DNRC will leave the definition of "manifold" in ARM 36.12.1701.

5. Pursuant to SB 103 and SB 128, the amendments to ARM 36.12.101, 36.12.102, 36.12.103, and 36.12.1701 will become effective on October 1, 2011.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director

/s/ Anne Yates
Anne Yates
Rule Reviewer

Certified to the Secretary of State September 12, 2011.